

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

VALERIE BROOKS, individually and  
on behalf of all others  
similarly situated,

Plaintiff,  
v.

Y.Y.G.M. SA d/b/a BRANDY  
MELVILLE, a Swiss Corporation,  
et. Al.

Defendants.

No. 2:21-cv-00078-JAM-CKD

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

Valerie Brooks ("Plaintiff" or "Brooks") sued Y.Y.G.M. SA doing business as Brandy Melville ("Defendant" or "YYGM"), a Swiss corporation, alleging violations of Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181 et seq. and the California Unruh Civil Rights Act ("Unruh Act"), Cal. Civ. Code §§ 51-53. See Compl., ECF No. 1.

Defendant moves to dismiss Plaintiff's ADA and Unruh claims for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b) (2). See Mot. to Dismiss ("Mot."), ECF No. 9. Plaintiff opposes the motion. See Opp'n, ECF No. 11. Defendants replied. See Reply, ECF No. 13. For the reasons set

1 forth below, the Court GRANTS Defendant's motion to dismiss.<sup>1</sup>

2 I. FACTUAL ALLEGATIONS

3 Brooks is visually impaired and legally blind. Compl. ¶ 1.

4 To access content on the internet, Brooks uses an assistive

5 screen-reading software, which reads website text aloud for her.

6 Id. The screen-reading software works on text-based content.

7 Id. ¶ 18. Websites that contain non-text elements, such as

8 images, will sometimes pose "significant access barriers to blind

9 and visually impaired persons." Id. ¶¶ 23, 28. In 2021, Brooks

10 visited "<https://us.brandymelville.com/>" ("Website"), which

11 "provides consumers access to a European clothing and fashion

12 accessory brand." Id. ¶¶ 5, 29. While navigating the Website,

13 Brooks encountered "multiple accessibility barriers" such as a

14 lack of alternative text for images, empty links, and redundant

15 links. Id. ¶ 28. Brooks alleges that these barriers "denied

16 [her] full and equal access to Defendant's website," which in

17 turn deterred her "from visiting Defendant's physical locations,"

18 in violation of the ADA and Unruh Act. Id. ¶¶ 30, 32. Brooks

19 seeks injunctive relief, statutory damages, and certification of

20 a nationwide class. Id. ¶ 68.

21 II. OPINION

22 A. Judicial Notice

23 Federal Rule of Evidence 201 allows the Court to notice a

24 fact if it is "not subject to reasonable dispute," such that it

25 is "generally known" or "can be accurately and readily

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27 <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was  
scheduled for September 14, 2021.

1 determined from sources whose accuracy cannot reasonably be  
2 questioned." Fed. R. Evid. 201(b). The Court may take judicial  
3 notice of court records, including "opinions, complaints,  
4 briefs, and evidence filed in other actions." BP W. Coast Prod.  
5 LLC v. Greene, 318 F.Supp.2d 987, 994 (E.D. Cal. 2004).  
6 However, a court "may not take judicial notice of proceedings or  
7 records in another case so as to supply, without formal  
8 introduction of evidence, facts essential to support a  
9 contention in the cause then before it." See M/V Am. Queen v.  
10 San Diego Marine Constr. Corp., 708 F.2d 1483, 1491 (9th Cir.  
11 1983).

12 Plaintiff asks the Court to take judicial notice of a  
13 complaint that Defendant filed against Redbubble Inc. in the  
14 Central District of California. See Pl.'s Req. for Judicial  
15 Notice ("RJN") at 1, ECF No. 12. A complaint is a court record,  
16 and therefore an appropriate document for judicial notice. BP  
17 W. Coast Prod. LLC, 318 F.Supp.2d at 994. However, the same  
18 cannot be said for its contents, as "it is well settled that  
19 allegations in pleadings are not evidence." Juniper Networks  
20 Inc., v. SSL Services, LLC, No. C08-5758 SBA, 2009 WL 3837266,  
21 at \*3 (N.D. Cal. Nov 16, 2009). For these reasons, the Court  
22 takes notice of the fact that Defendant filed a complaint in the  
23 Central District of California, but the Court declines to take  
24 notice of any allegations contained within the complaint for the  
25 truth of the facts asserted.

26 Plaintiff also requests the Court take judicial notice of  
27 relevant pages of Defendant's Website, submitted as Exhibit B.  
28 RJN at 1. Websites and their contents are proper subjects for

1 judicial notice. Threshold Enterprises Ltd. v. Pressed Juicery,  
2 Inc., 445 F.Supp.3d 139, 146 (N.D. Cal. 2020). Thus, the Court  
3 grants Plaintiff's request for judicial notice of Exhibit B.

4       B. Personal Jurisdiction

5           1. Legal Standard

6           Defendant moves to dismiss Plaintiff's complaint for lack  
7 of personal jurisdiction under Federal Rule of Civil  
8 Procedure 12(b)(2). Mot. at 9. To defeat a Rule 12(b)(2)  
9 motion, the plaintiff must make a *prima facie* showing of  
10 jurisdictional facts sufficient to establish that jurisdiction  
11 is proper. Mavrix Photo, Inc. v. Brand Tech., Inc. 647 F.3d  
12 1218, 1223 (9th Cir. 2011). Here, where there is no applicable  
13 federal statute governing personal jurisdiction, the Court  
14 applies the law of California. Id. Because California's long-  
15 arm statute is coextensive with federal due process  
16 requirements, the jurisdictional analysis under state law and  
17 federal due process are the same. Id. (citing Cal. Civ. Proc.  
18 Code § 410.10). For this Court to exercise personal  
19 jurisdiction consistent with due process, the defendant must  
20 have "minimum contacts" with this forum "such that the  
21 maintenance of the suit does not offend 'traditional notions of  
22 fair play and substantial justice.'" Int'l Shoe Co. v.  
23 Washington, 326 U.S. 310, 316 (1945) (internal citations  
24 omitted). A court may exercise either general or specific  
25 jurisdiction over a defendant. Goodyear Dunlop Tires  
26 Operations, S.A. v. Brown, 564 U.S. 915, 919-20 (2011).

27       ///

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1                   2. General Jurisdiction Analysis

2                 A court has general jurisdiction over a party whose  
 3 "continuous operations within a state [are] so substantial and  
 4 of such a nature as to justify a suit against it on causes of  
 5 action arising from dealings entirely distinct from those  
 6 activities." Int'l Shoe Co., 326 U.S. at 318. This is a very  
 7 exacting standard that requires Defendant's activities in  
 8 California be "so continuous and systematic as to render [it]  
 9 essentially at home" in the state. Goodyear Dunlop Tires, 564  
 10 U.S. at 919. Generally, a corporate defendant is "at home" in  
 11 California in three situations: (1) It is incorporated in the  
 12 state, (2) it has its principal place of business in the state,  
 13 or (3) it has "continuous and systematic contacts" with the  
 14 state. Daimler AG v. Bauman, 571 U.S. 117, 137 (2014).

15                 Defendant argues that it is not subject to general  
 16 jurisdiction in California. Defendant is neither incorporated  
 17 nor does it have its principal place of business in California.  
 18 Mot. at 11; see also Decl. of Francesco Fabiani ¶ 2, ECF No. 9-  
 19 1. Further, Defendant alleges it has "no contacts with  
 20 California." Mot. at 7. Plaintiff does not respond to  
 21 Defendant's argument in her opposition. She states only that  
 22 her "[[o]]pposition is premised upon the assertion of specific  
 23 personal jurisdiction." Opp'n at 5 (emphasis added). Because  
 24 Plaintiff does not oppose Defendant's argument that the Court  
 25 lacks general jurisdiction, Plaintiff waives this argument. See  
 26 Resnick v. Hyundai Motor America, Inc., No. CV 16-00593-BRO  
 27 (PJWx), 2017 WL 1531192 at \*22, (C.D. Cal. Apr. 13, 2017)  
 28 ("Failure to oppose an argument raised in a motion to dismiss

1 constitutes waiver of that argument"). Accordingly, the Court  
2 does not find general jurisdiction exists over Defendant.

3       3. Specific Jurisdiction Analysis

4       Specific jurisdiction "depends on an affiliation between  
5 the forum and the underlying controversy, principally, activity  
6 or an occurrence that takes place in the forum State and is  
7 therefore subject to the State's regulation." Goodyear Dunlop  
8 Tires, 564 U.S. at 919. The Ninth Circuit uses a three-prong  
9 test for analyzing claims of specific jurisdiction.  
10 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th  
11 Cir. 2004). First, the nonresident defendant "must purposefully  
12 direct its activities or consummate some transaction with the  
13 forum or resident thereof, or perform some act by which it  
14 purposefully avails itself of the privilege of conducting  
15 activities in the forum, thereby invoking the benefits and  
16 protections of its laws." Id. Second, "the claim must be one  
17 which arises out of or relates to the defendant's forum-related  
18 activities." Id. And finally, "the exercise of jurisdiction  
19 must comport with fair place and substantial justice such that  
20 it is reasonable." Id. The plaintiff bears the burden of  
21 satisfying the first two prongs of the test. Sher v. Johnson,  
22 911 F.2d 1357, 1361 (9th Cir. 1990). If the plaintiff fails to  
23 satisfy either, then personal jurisdiction is not established,  
24 and the suit must be dismissed. Schwarzenegger, 374 F.3d at  
25 802.

26       The first prong covers two distinct concepts. A purposeful  
27 availment analysis most often applies to suits sounding in  
28 contract. See, e.g., Doe v. Unocal Corp., 248 F.3d 915, 924

1 (9th Cir. 2001). Meanwhile, purposeful direction analysis  
2 applies in suits sounding in tort. See, e.g., Dole Food Co.,  
3 Inc. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002). Both  
4 parties assert and the Court agrees that the purposeful  
5 direction test applies here. Mot. at 13; Opp'n at 6.

6 Under purposeful direction analysis, the Ninth Circuit  
7 deploys the three-part test from Calder. Schwarzenegger, 374  
8 F.3d at 803, (citing Calder v. Jones, 465 U.S. 783 (1984)).  
9 This test requires that the defendant "(1) committed an  
10 intentional act, (2) expressly aimed at the forum state,  
11 (3) causing harm that the defendant knows is likely to be  
12 suffered in the forum state." Dole Food, 303 F.3d at 1111  
13 (internal citations omitted). As noted, Plaintiff has the  
14 burden to prove purposeful direction. Sher, 911 F.2d at 1361.

15 Plaintiff makes two arguments for why the Calder test is  
16 satisfied. Opp'n at 6-7. First, Plaintiff argues that  
17 Defendant intentionally directed its activities towards  
18 California through its Website by "advertis[ing] on the  
19 website . . . and specifically includ[ing] a drop-down menu  
20 option: 'For CA Residents.'" Ex. B to Opp'n. The webpage  
21 referred to and submitted as Exhibit B provides notices about  
22 personal information to California residents as required by the  
23 California Consumer Privacy Act. Id. Before the Court  
24 considers whether the webpage supports Plaintiff's contention  
25 that Defendant directed its activities towards California, the  
26 Court notes a fatal stumbling block for Plaintiff's analysis: It  
27 is unclear whether Defendant owns or operates the Website.

28 Defendant claims it "does not own, maintain, nor operate

1 the website, and has no control over whether it is accessible to  
2 the visually impaired.” Mot. at 14; Fabiani Decl. ¶ 5.  
3 Plaintiff challenges this claim but erroneously relies on the  
4 contents of Defendant’s prior pleading in a different case to  
5 support its challenge. As noted above, the Court cannot treat  
6 the contents of Defendant’s prior pleading for the truth of the  
7 matters asserted. Further, where Defendant has submitted an  
8 affidavit to contradict the allegations laid out in the  
9 Plaintiff’s complaint, the Court “may not assume the truth of  
10 [the] allegations.” Data Disc, Inc. v. Systems Technology  
11 Associates, Inc., 557 F.2d 1280, 1284 (9th Cir. 1977). The  
12 “mere allegations of the complaint, when contradicted by  
13 affidavits, are [not] enough to confer personal jurisdiction of  
14 a nonresident defendant.” Taylor v. Portland Paramount Corp.,  
15 383 F.2d 634 (9th Cir. 1967). Therefore, lacking more,  
16 Plaintiff has not shown that Defendant owns or operates the  
17 Website. As a result, Plaintiff fails to show that Defendant  
18 directed its activities toward California.

19 Plaintiff’s second argument also relies on Defendant’s  
20 prior complaint. This time, it is not the contents, but the  
21 mere fact that Defendant filed the complaint. Plaintiff argues,  
22 “Defendant cannot expect to gain the advantage to litigate in CA  
23 when convenient to them, but not hold itself liable when it’s  
24 inconvenient. They cannot have it both ways.” Opp’n at 1.  
25 Plaintiff does not cite any caselaw standing for the proposition  
26 that the mere act of filing a complaint can support a finding of  
27 specific personal jurisdiction in an unrelated case. However,  
28 there is caselaw suggesting the contrary. See Ibrani v. Mabetex

1       Project Eng'g, No. 3:00-cv-00107, 2002 WL 1226848, at \*20 (N.D.  
2 Cal. Jun 3, 2002) (explaining "the fact that one  
3 defendant . . . filed a lawsuit here six years ago does not make  
4 it reasonable today to require defendants to defend a lawsuit  
5 here that has no significant nexus to California"). For this  
6 reason, the Court finds that Defendant's prior complaint does  
7 not support a finding that Defendant purposefully directed its  
8 actions towards California such that specific jurisdiction is  
9 appropriate.

10 Because Plaintiff has not met her burden on the first prong  
11 of the three-part specific jurisdiction test, the Court ends its  
12 inquiry and does not consider the remaining prongs.

13 Accordingly, the Court dismisses this action without prejudice  
14 for lack of personal jurisdiction. Grigsby v. CMI Corp., 765  
15 F.2d 1369, 1372 n.5 (9th Cir. 1985) (noting that dismissals for  
16 lack of personal jurisdiction are to be without prejudice).

### III. ORDER

18 For the reasons set forth above, the Court DISMISSES WITHOUT  
19 PREJUDICE Plaintiff's claims under the ADA and Unruh Civil Rights  
20 Act. If Plaintiff elects to amend her complaint with respect to  
21 these claims, she must do so within twenty (20) days of this  
22 Order. Defendant's responsive pleading is due twenty (20) days  
23 thereafter.

24 IT IS SO ORDERED.

25 || Dated: November 22, 2021

  
JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE